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Dear Mr. Younkin,

I am writing in response to your January 29, 2002, letter asking about expenditures from the Governor's emergency fund.

From the facts set forth in your letter, on September 11 of this year the Governor, in Executive Order 23-01, declared a state of emergency under section 10-3-302, MCA, which can last 20 days. The President also declared a national emergency, which is still in effect. On October 2 the Governor, in a memo to the Department of Military Affairs, confirmed the termination of the state of emergency. In the same memo the Governor authorizes the Disaster and Emergency Services Division, Department of Military Affairs, to "continue those specific services and tasks that were discussed with the Director/OBPP yesterday, subject to the fiscal limits and timeline limits (i.e. 30 days) that were agreed to by Director Swysgood in that discussion."

Section 10-3-302(3), MCA, reads:

A state of emergency may not continue for longer than 20 days unless continuing conditions of the state of emergency exist, which shall be determined by a declaration of an emergency by the president of the United States or by a declaration of the legislature by joint resolution of continuing conditions of the state of emergency.

The termination date for the 20-day state of emergency declared by the Governor was October 2. If the Governor had not terminated the state of emergency in the memo of October 2, the state of emergency would have continued because of the Presidential declaration of emergency.

On October 5, the Disaster and Emergency Services Division requested general fund authority from the Governor's emergency fund for "costs to complete the preventative tasks initiated by the State Emergency Coordination Center (SECC) in response to the continued threat of terrorist attacks on the United States per Governor Martz' Oct 2, 2001 letter to General Prendergast and Executive Order 23-01. This authority will be used to pay overtime, travel, and operating expenses for State DES and to hire short term workers to help complete the State Emergency Coordination Plan, Weapons of Mass Destruction Plan, Pharmaceutical Stockpile Plan and other contingency plans that continue to arise due to the threat." On October 29, the General Services Division, Department of Administration, requested general fund authority from the Governor's emergency fund to "help pay for the additional security the governor has required since September 11, 2001." On November 20 the Montana Highway Patrol, Department of Justice, requested general fund authority from the Governor's emergency fund to pay expenditures related to security provided to FEMA representatives at a conference in Big Sky and security for the Capitol Building. The requests were made under the provisions of section 10-3-303, MCA, for funds provided under section 10-3-312, MCA. The Office of Budget and Program Planning approved the requests.

Section 10-3-303(4), MCA, reads:

- (4) The governor shall terminate a state of emergency or disaster when:
 - (a) the emergency or disaster has passed;
 - (b) the emergency or disaster has been dealt with to the extent that emergency or disaster conditions no longer exist; or
 - (c) at any time the legislature terminates the state of emergency or disaster by joint resolution. *However, after termination of the state of emergency or disaster, disaster and emergency services required as a result of the emergency or disaster may continue.* [emphasis added]

Section 10-3-312, MCA, establishes an emergency fund that is a statutory appropriation of \$12 million to the office of the Governor whenever there is a disaster or emergency.

You specifically asked about funding activities after the October 2 termination of the state of emergency. Whether the funding can be made out of the emergency fund hinges directly on the meaning of the italicized sentence of 10-3-303(4)(c) quoted above. In my opinion, the "continuation" of emergency services envisioned in the sentence is to allow a wrap-up of services that haven't ended at the formal termination of the emergency. The use of the word "continuation" implies that the service began while the state of emergency was in effect and is necessary to continue after termination. Any service that is started after the termination of the emergency, such as hiring additional workers, writing plans, or otherwise establishing open-ended programmatic activities, even though related in some manner to the type of emergency, should not be funded as an emergency from the emergency fund. Other activities that are a continuation of services begun during the emergency, that are a result of the emergency, and that continue temporarily should continue to be funded from the emergency fund. The problem lies with the middle case: those services that were begun during the emergency and are a result of the emergency, but are to continue indefinitely. These services should be removed from emergency funding as soon as other funding is found or, if other funding is not available, terminated. If

other funding is found, unless the funding is a reimbursement, such as from federal funds, it should not be treated as a "recovery of money" as contemplated in section 10-3-312(2), MCA, that should be used to repay the emergency fund for those services paid by the emergency fund before regular funding became available.

Sincerely,

Lee Heiman
Staff Attorney

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